

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**JOSEPH OWENS,**

**Plaintiff,**

**v.**

**GARFIELD COUNTY DETENTION CENTER,  
et al.,**

**Defendants.**

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**Case No. CIV-21-482-PRW**

**REPORT AND RECOMMENDATION**

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Pursuant to an order entered by United States District Judge Patrick R Wyrick, this matter has been referred to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C § 636(b)(1)(B).

On July 2, 2021, the undersigned entered an order granting Plaintiff's Motion to Proceed *In Forma Pauperis*, (ECF No. 11), but ordered Plaintiff to pay an initial partial filing fee of \$4.16. Plaintiff's deadline for submitting said payment was July 19, 2021. Plaintiff was advised that he could voluntarily dismiss this action in accordance with Fed. R. Civ. P. 41(a) on or before July 19, 2021, without incurring any fees or costs. Plaintiff was further cautioned that the undersigned would recommend that the action be dismissed without prejudice if Plaintiff failed to comply with his obligation to make the initial partial payment or show cause in writing for the failure to pay by the specified date.

The Court granted Plaintiff's Motion for Extension of Time, extending the due date for payment of the initial partial payment to August 18, 2021. *See* ECF Nos. 12 and 13.

As of this date, Plaintiff has failed to pay the filing fee as required. In fact, Plaintiff has failed to respond to the Court's Order in any way. Further, there is no indication from the docket that Plaintiff did not receive the Court's previous Order which were mailed to Plaintiff's address of record. *See* ECF No. 13 and Staff notes dated 8/2/2021; LCvR 5.4(a).

Thus, the action is subject to dismissal without prejudice to re-filing. Local Civil Rule 3.4(a); *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay). *See also Kennedy v. Reid*, No. 06-1075, 208 Fed. Appx. 678 (10th Cir. Dec. 13, 2006) (finding no abuse of discretion in district court's dismissal without prejudice of section 1983 action due to litigant's failure to timely pay initial filing fee); *Campanella v. Utah County Jail*, Nos. 02-4183, 02-4215, 02-4235, 78 Fed. Appx. 72, 73 (10th Cir. Oct. 10, 2003) (same). Moreover, under Fed. R. Civ. P. 41(b) a district court may dismiss an action because the plaintiff fails to comply with a court order requiring partial payments. *Cosby*, 351 F.3d at 1327.

### **RECOMMENDATION**

In light of the foregoing, the undersigned hereby recommends that this action be **DISMISSED** without prejudice for Plaintiff's failure to pay the initial filing fee as ordered by the Court.

### **NOTICE OF RIGHT TO OBJECT**

Plaintiff is advised that any objections to this Report and Recommendation must be filed with the Clerk of this Court on or before **October 25, 2021**, in accordance with 28 U.S.C § 636 and Federal Rule of Civil Procedure 72. Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues decided herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

### **STATUS OF THE REFERRAL**

This report and recommendation terminates the referral to the undersigned magistrate judge unless and until the matter is re-referred.

**ENTERED** on October 8, 2021.



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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE